In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-325

SUSAN ROVNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that she was improperly adjudged in civil contempt for having refused to supply a grand jury with handwriting exemplars.

After having refused to comply with a grand jury subpoena, in violation of a court order to do so, petitioner was adjudged in civil contempt in the United States District Court for the Eastern District of Pennsylvania. She was ordered committed to custody until she should purge herself of the contempt (Pet. App. B, p. 9). The court of appeals affirmed (Pet. App. C, pp. 9-10).

A grand jury in the Eastern District of Pennsylvania had subpoenaed petitioner in connection with an investigation of her husband and demanded that she supply exemplars of her handwriting and hand printing. Peti-

tioner appeared, but upon being informed that her husband was the subject of the investigation, she declined to give the handwriting samples, claiming her marital privilege as justification. The government moved to enforce the subpoena, and the district court granted the motion, holding the marital privilege inapplicable to non-testimonial evidence and finding that, in any case, no privilege applied to the type of evidence sought (Pet. App. A, pp. 7-8). Despite the district court's order, petitioner persisted in her refusal to supply handwriting exemplars, and she was consequently adjudged in civil contempt (Pet. App. B, p. 9).

The grand jury subsequently returned an indictment against petitioner's husband, charging him in three counts with violations of 18 U.S.C. 1951, 26 U.S.C. 7201, and 26 U.S.C. 7206(1) (*United States* v. *Robert A. Rovner*, Cr. No. 74-602, E.D. Pa.). In light of this indictment, the government moved to vacate the civil contempt order against petitioner. We are advised that the government's motion to vacate was granted November 13, 1974. We submit, therefore, that this case is now moot.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.